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10/789,901	02/27/2004	Steve R. DeVos	5760-21800/VRTS0448	9306
35690 7590 03/11/2008 MEYERTONS, HOOD, KIVLIN, KOWERT & GOETZEL, P.C. P.O. BOX 398 AUSTIN, TX 78767-0398				
EXAMINER KAPLAN, BENJAMIN A				
ART UNIT 2139		PAPER NUMBER		
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/789,901

Applicant(s)

DEVOS, STEVE R.

Examiner

BENJAMIN A. KAPLAN

Art Unit

2139

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 February 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-24 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 27 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-8508)
- Paper No(s)/Mail Date 08/08/2004
- 4) ☐ Interview Summary (PTO-413)
- Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

1. Claims 1-24 are pending.

Claim Rejections - 35 USC § 101

2. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 1-10 & 19-24 are rejected as being non-statutory because the computer accessible medium can be any medium and applicant's specification page 18, first paragraph specifically mentions signals, which are non-statutory.

Claim 1-10 & 19-24 are also rejected as non-statutory because they recite a computer program per se representing functional descriptive material without a processor and a memory.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claim 7 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 7 recites "the fourth key" without having established a fourth key. Examiner believes that Claim 7 was intended to be dependent on claim 6 as apposed to claim 5.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. Claims 1-24 are rejected under 35 U.S.C. 102(e) as being anticipated by United States Patent No.: US 6,535,998 B1 (Cabrera et al.).

As Per Claim 1: Cabrera et al. teaches:

- A computer accessible medium comprising a plurality of instructions which, when executed during a restore operation of a database to a computer system, wherein the database describes a computer system configuration, and wherein a first instance of the database is included in backup data being restored and a second instance of the database exists on the computer system:

(Abstract, Lines 1-9 "A method and system for recovering from a system failure wherein the failed system is restored to a new system that has different hardware. Hardware state is preserved during a backup process, and following a failure, a restore is performed to the extent possible using that hardware state but on a system having a

different hardware configuration. Rules are provided for handling the differences through selective merging, arranging, and replacement of data, with the logic and work performed transparently to the user.”).

- process one or more first keys of the second instance, the one or more first keys identifying one or more second keys of the second instance, wherein identification by the one or more first keys indicates that the one or more second keys are to be preserved in the database subsequent to the restore operation

(Column 13, Lines 23-41 “In addition to disks, other hardware devices may be different in a new system. For example, if the system has changed (e.g., the original was destroyed or damaged) or one or more relatively important devices (e.g., the hard disk controller) have changed since the backup, ASR (the restore process 70) redetects any changed devices and writes them to the system registry 88. Any drivers and support for these devices are also installed as part of the setup. Note that the detection code is the same that is used during an initial setup of an operating system (Windows) and is thus not described in detail herein. Further note that if a special driver was present, then that driver was backed up and is available for ASR to install, as described above.

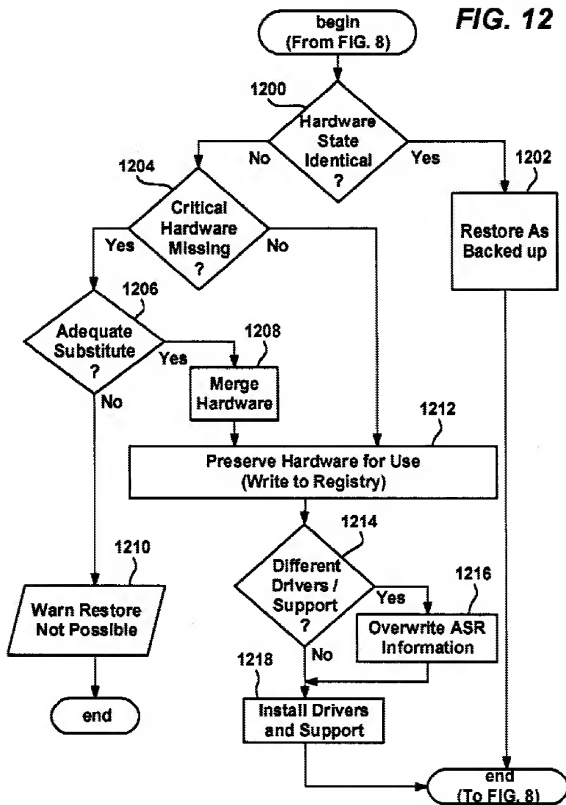
Following the redetection, the restore process 70 performs a merge with the devices and drivers that were backed up. In general, and as represented in FIG. 12, the logic used during the merge considers critical devices (devices that are required to start

the system, backed up in a CriticalDeviceDatabase or the like) that differ what the backup contains and what ASR has detected.”).

- if the computer system's hardware is equivalent to hardware of a source of the backup data, process a third key, wherein the third key overrides a preservation of at least one of the one or more second keys

(Column 13, Lines 42-47 “First, however, a test may be performed at step 1200 to determine whether the new system is identical in hardware devices to the former system, since if so, no device changes need to be handled. If identical, step 1202 is performed to handle any restoration that may be needed (e.g., properties set for the devices), and the process ends.”).

(Cabrera et al. Figure 12



).

Applicants use of the term “keys” is used in the flow of instructions during restore operations, therefor examiner equates Cabrera et al.’s conditional statements (e.g. yes, no, determinations illustrated in figure 12. and the underlying data) as equivalent to applicants’ claim language regarding the processing of on or more keys.

Cabrera et al.’s method skips preservation issues of hardware settings if the system being restored to has an identical hardware state.

As Per Claim 2: The rejection of claim 1 is incorporated and further Cabrera et al. teaches:

- the plurality of instructions, when executed, merge the first instance and the second instance of the database to generate a third instance, wherein the third instance comprises: (i) each of the one or more second keys from the second instance whose preservation is not overridden by the third key; and (ii) each of the one or more second keys from the first instance whose preservation is overridden by the third key

(Column 13, Lines 48-63 “If differences exist, step 1204 is performed to determine if a critical device is not present on the new system. For example, a floppy drive or CD-ROM may have the sif file thereon, and thus such a device is needed to restore the system. If no critical device is missing, step 1204 branches to step 1212 as described below. However, it is also possible that a critical device is missing, but an

adequate substitute is available. For example, different floppy drives may read floppy disks, DVD-ROM drives may read CD-ROMS and so on. Thus, if missing, step 1204 branches to step 1206 to determine if such an adequate substitute exists. If no substitute exists, step 1210 is performed to inform the operator of the inability to restore the system. On the other hand, if an adequate substitute exists, step 1208 merges (substitutes) the hardware by allowing the actual state to be used instead of the state recorded in the sif file.”).

As Per Claim 3: The rejection of claim 2 is incorporated and further Cabrera et al. teaches:

- the plurality of instructions, when executed, restore the third instance to the computer system

(Column 14, Lines 1-4 “If the device is non-critical to the starting of the system, or a critical device that has been merged, step 1212 preserves any different devices that ASR might have detected. This information is saved in the registry 88.”).

As Per Claim 4: The rejection of claim 2 is incorporated and further Cabrera et al. teaches:

- the source comprises a second computer system

(Column 5 Line 63 – Column 6 Line 6 “As will be described below, the system state 62 is recorded on a medium (e.g., a floppy disk 68) that is readily accessible to (i.e., readable by) a newly operational, but not yet restored machine. As used herein, the readily-readable medium will be described as a floppy disk 68, but as can be readily appreciated, the medium may alternatively comprise a read-writeable CD-ROM, network storage (e.g., in a directory of files), flash memory card, wired or wireless telephone connection, smart card and virtually anything else capable of recording and/or transmitting information to a computer system for use by a restore process 70 (FIG. 3).”).

As Per Claim 5: The rejection of claim 1 is incorporated and further the computer system is what is being restored in Cabrera et al.’s method.

As Per Claim 6: The rejection of claim 1 is incorporated and further the “keys” are processed the automated system recovery.

As Per Claim 7: The rejection of claim 5 is incorporated and further “keys” are processed during the restore operation.

As Per Claim 8: The rejection of claim 1 is incorporated and further Cabrera et al. teaches:

- a second plurality of instructions which, when executed prior to a backup operation on the source, insert the third key into the database if the third key is not found in the database

(Column 13, Lines 42-47, as seen in the rejection of claim 1).

(Cabrera et al. Figure 12, as seen in the rejection of claim 1).

(Column 6, Lines 29-48 "A third operation performed by the backup program 60 is to collect system registry 88 information, again via common (NT Registry) APIs 90. As is well-known, the system registry 88 essentially comprises a database of properties, settings and other information used by the operating system and applications at various times to perform various functions. For example, the registry 88 includes information on specific devices and drivers installed on this system, such as the hard disk controller and audio card. Via this set of common APIs 90 and conventions for retrieving the data stored in the registry 88, the saved registry may be recreated and/or adjusted on a restored system.").

The list of the hardware as backed up provides for the third key.

As Per Claim 9: The rejection of claim 8 is incorporated and further Cabrera et al. teaches:

- the second plurality of instructions are executed responsive to an install of the second plurality of instructions and the plurality of instructions on the source

(Column 6, Lines 29-48, as seen in the rejection of claim 8).

(Column 4, Lines 52-65 "The present invention is directed to restoring hardware state on a system that is not identical to a failed system. As such, the present invention may be incorporated into a system backup and restore process referred to as Automated System Recovery (ASR), an integrated mechanism for the backup and restoration of system state. The ASR mechanism provides a single coherent and structured mechanism for backing up and restoring system state. The ASR mechanism is further described in the copending United States Patent Application entitled, "Automated System Recovery via Backup and Restoration of System State," assigned to the assignee of the present invention, filed concurrently herewith, and hereby incorporated by reference in its entirety.").

The ASM mechanism that provides for the backup restore is detailed at length in the incorporated patent titled "Automated System Recovery via Backup and Restoration of System State" United States Patent No.: US 6,820,214 B1.

As Per Claim 10: The rejection of claim 1 is incorporated and further Cabrera et al. teaches:

- the processor coupled to the computer accessible medium and configured to execute the plurality of instructions

(Cabrera et al. Figure 1

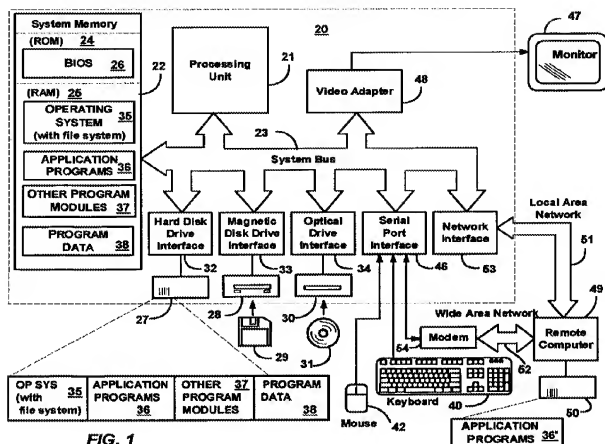


FIG. 1

).

As Per Claim 11: The limitations of claim 11 are substantially a restatement of the limitations of claim 1 as a method and are rejected under substantially the same reasoning.

As Per Claim 12: The rejection of claim 11 is incorporated and further the limitations of claim 12 are substantially a restatement of the limitations of claim 2 as a method and are rejected under substantially the same reasoning.

As Per Claim 13: The rejection of claim 12 is incorporated and further the limitations of claim 13 are substantially a restatement of the limitations of claim 3 as a method and are rejected under substantially the same reasoning.

As Per Claim 14: The rejection of claim 11 is incorporated and further the limitations of claim 14 are substantially a restatement of the limitations of claim 4 as a method and are rejected under substantially the same reasoning.

As Per Claim 15: The rejection of claim 11 is incorporated and further the limitations of claim 15 are substantially a restatement of the limitations of claim 5 as a method and are rejected under substantially the same reasoning.

As Per Claim 16: The rejection of claim 11 is incorporated and further the limitations of claim 16 are substantially a restatement of the limitations of claim 6 as a method and are rejected under substantially the same reasoning.

As Per Claim 17: The rejection of claim 16 is incorporated and further the limitations of claim 17 are substantially a restatement of the limitations of claim 7 as a method and are rejected under substantially the same reasoning.

As Per Claim 18: The rejection of claim 11 is incorporated and further the limitations of claim 18 are substantially a restatement of the limitations of claim 8 as a method and are rejected under substantially the same reasoning.

As Per Claim 19: The limitations of claim 19 are substantially a restatement of the limitations of claim 1 and are rejected under substantially the same reasoning.

As Per Claim 20: The rejection of claim 19 is incorporated and further the limitations of claim 20 are substantially a restatement of the limitations of claim 2 and are rejected under substantially the same reasoning.

As Per Claim 21: The rejection of claim 19 is incorporated and further the limitations of claim 21 are substantially a restatement of the limitations of claim 3 and are rejected under substantially the same reasoning.

As Per Claim 22: The rejection of claim 19 is incorporated and further the limitations of claim 22 are substantially a restatement of the limitations of claims 6 & 7 and are rejected under substantially the same reasoning.

As Per Claim 23: The rejection of claim 22 is incorporated and further the limitations of claim 23 are substantially a restatement of the limitations of claim 7 and are rejected under substantially the same reasoning.

As Per Claim 24: The rejection of claim 19 is incorporated and further the limitations of claim 24 are substantially a restatement of the limitations of claim 10 and are rejected under substantially the same reasoning.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to BENJAMIN A. KAPLAN whose telephone number is (571)270-3170. The examiner can normally be reached on 7:30 a.m. - 5:00 p.m. E.S.T..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kristine Kincaid can be reached on 571-272-4063. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Christian LaForgia/

Art Unit: 2139

Primary Examiner, Art Unit 2139

Benjamin Kaplan